

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JEREMY BAILEY,	:	
Plaintiff	:	No. 1:20-CV-1836
	:	
v.	:	Judge Kane
	:	
LIEUTENANT YODER,	:	Electronically Filed Document
SERGEANT R. BATIUK, C.O.	:	
DERR and C.O. ANTHONY,	:	<i>Complaint Filed 10/07/2020</i>
Defendants	:	

**DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS IN
SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

Defendants Yoder, Batiuk, Derr, and Anthony, by and through counsel, hereby submit this Statement of Undisputed Material Facts in support of their Motion for Summary Judgment pursuant to Local Rule 56.1, and aver as follows:

1. Plaintiff was housed within the Restricted Housing Unit (RHU) on September 10, 2019. (Ex. 1 (Bailey Deposition Transcript) at 5:23-25, 6:15-22.)

2. During first shift, several inmate cell moves were ordered to be effectuated to accommodate the needs of incoming inmates. (Ex. 2 (Yoder DC-121 Form) at 1.)

3. Defendant Derr and Defendant Batiuk inadvertently placed Inmate McCullough within the same cell as Plaintiff at 11:30 a.m. on September 10, 2019. (*Id.*)

4. Plaintiff claims that he and Inmate McCullough informed Defendants Derr and Anthony that McCullough had a Z Code and should not have been placed within a cell with another inmate during McCullough's initial placement within the cell. (Doc. 1 at ¶¶ 12, 18.)

5. Defendant Yoder did not become aware of McCullough's placement into Plaintiff's cell until the day after the move occurred. (Ex. 2 at 1 ("The next day, I learned CO Derr and Sgt. Batiuk had moved inmate McCullough from HA1014 to HA1005 with inmate Bailey.").)

6. Plaintiff claims that he and Inmate McCullough informed Defendant Yoder of McCullough's Z Code one time while Yoder assisted in a separate and unrelated use of force incident with a non-party inmate on another part of the unit. (Doc. 1 at ¶ 31; Ex. 1 at 28:4-12, 29:4-25, 30:1-11, 31:1-5.)

7. Plaintiff claims that he and Inmate McCullough informed Defendant Batiuk that McCullough had a Z Code and should not have been placed within a cell with another inmate only one or two times at most. (Ex. 1 at 31:11-14, 31:19-24, 32:2-20.)

8. During the next staff shift, wherein the named Defendants were not working, Inmate McCullough informed staff at approximately 2:13 p.m. that he had tied-up Plaintiff. (*See* Ex. 3 (Extraordinary Occurrence Report 2019-COA-00353 at Ex 3_002.)

9. Staff found Plaintiff on the floor of his cell with his wrists and ankles tied together with torn bed sheets. (*Id.*)

10. Staff immediately acted by restraining McCullough and rendering assistance to Plaintiff. (*Id.*)

11. Staff immediately transported Plaintiff to medical for assessment and treatment. (*Id.*)

12. During said assessment and treatment, Plaintiff self-reported neck and left ear pain. (Ex. 3 at Ex_031.)

13. There was no long-standing or well-documented tensions between Inmate McCullough and Plaintiff. (*See gen.* Ex. 2 at 1; Ex. 3 at Ex 3_002.)

Respectfully submitted,

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Date: May 31, 2022

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**DEFENDANTS' INDEX OF EXHIBITS CITED IN SUPPORT OF THEIR
STATEMENT OF UNDISPUTED MATERIAL FACTS**

Exhibit 1—J. Bailey Deposition Transcript

Exhibit 2—Yoder DC-121 Report

Exhibit 3—Extraordinary Occurrence Report 2019-COA-00353

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CERTIFICATE OF SERVICE

I, Nicole R. DiTomo, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on June 1, 2022, I caused to be served a true and correct copy of the foregoing document titled *Defendants' Statement of Undisputed Material Facts in support of their Motion for Summary Judgment* to the following:

VIA U.S. MAIL

Jeremy Bailey
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Pro Se Plaintiff

s/ Nicole R. DiTomo
NICOLE R. DITOMO
Senior Deputy Attorney General